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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/660,288

09/11/2003

Michael Zung

16497.138.1.1.2.1

5342

57360

7590

03/29/2011

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

03/29/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/660,288	<b>Applicant(s)</b> ZUNG ET AL.	
	<b>Examiner</b> MICHAEL G. MENDOZA	<b>Art Unit</b> 3734	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,6,10-14,16-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6,10-14,16-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :8/2/10, 9/8/10, 9/29/10, 10/07/10, 11/3/10, 11/17/10, 12/8/10, 12/20/10, 12/30/10, 1/21/11, 1/25/11, 1/31/11.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 3, 5, 6, 10-14, 16-18, and 20-23 have been considered but are moot in view of the new ground(s) of rejection. The applicant has amended independent claims 1, 12, and 20 to include new limitations. The new limitations change the scope of the claims requiring new consideration.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/30/2010 has been entered.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 5, 6, 10-14, 16-18, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takamoto et al. 7063710 in view of Ahmad 4848341.

5. Takamoto et al. teaches a suturing device comprising: a housing having a proximal end and a distal end (see. fig 1); a hollow body (fig. 5); a needle actuation

Art Unit: 3734

handle (3 + 5) disposed at the proximal end of the housing; a movable handle (3 + 5); a shaft (1) at least partially disposed within a portion of the housing and extending distally from the distal end of the housing; and a needle movable within a needle lumen (see fig. 4) associated with the shaft and that extends toward a proximal end of the housing, the needle being attached to a length of suture, the needle (6) having a tapered tip, the tapered tip being initially oriented toward the distal end of the housing. It should be noted that Takamoto et al. fails to teach an opening disposed toward the distal end, a blade guard partially extending over the opening, and a stationary suture cutting blade positioned within the opening and beneath the blade guard, the stationary cutting blade having a V-shaped cutting edge.

6. Ahmad teaches a device with a common opening, a blade guard partially extending over the opening, and a stationary suture cutting blade positioned within the opening and beneath the blade guard (fig. 3). Takamoto et al. teaches the need of a cutting device to cut the suture when suturing is complete (col. 9, lines 1-3). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Takamoto et al. in view of Fogarty et al. to allow for cutting of excess suture material after suturing is complete. It would have also been obvious to one having ordinary skill in the art at the time the invention was made to place the blade guard, the opening, and the stationary suture cutting blade near the distal end of the housing, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. *In re Japikse* held that claims that read on the prior art except with regard to the position of a claimed element

Art Unit: 3734

were held unpatentable if shifting the position of the claimed element would not have modified the operation of the device. 181 F.2d 1019; 86 USPQ 70 (CCPA 1950). Simple relocation of the suture-cutting blade does not modify the operation of the claimed device, but merely relocates the location of drawing the suture across the blade.

7. Takamoto/Ahmad teaches wherein the movable handle is configured to deploy a foot (23); wherein the needle has a distal end and the suture is attached to the distal end of the needle (see figs., Takamoto).

8. Takamoto/Fogarty discloses the claimed invention except for a removable needle actuation handle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the handle removable, since it has been held that constructing a formerly integral structure in various elements involves only routing skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent Nos. 4782954 (Reynolds) and 5169041 (Tan).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3734

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. G. M./  
Examiner, Art Unit 3734

/Gary Jackson/  
Supervisory Patent Examiner, Art Unit 3734  
March 27, 2011